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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,156	11/06/2000	Vivian A. Schramm		8663

7590

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 04/01/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/07/156

Applicant(s)

SCHRAMM ET AL

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- Of the above claim(s) 15-20 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-14 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 013
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

NOTE: IDS, PAPER #2 MISSING

Art Unit: 1764

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14, drawn to a container, classified in class 426, subclass 115.
- II. Claims 15-20, drawn to a process for coating a confection, classified in class 426, subclass 389.

The inventions are distinct, each from the other because:

The container of Group I can be used in methods other than that recited in Group II. For example, the container of Group I does not have to be used in a coating process. For example, the two products need not be associated with each other in the container to physically perform a coating. The two products could thus be eaten separately or one or the other not eaten at all.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art requiring separate searches as evidenced by their different classification, restriction is proper.

During a telephone conversation with Mr. Schramm by Examiner Mai on March 2002 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Note that claim 20 appears to include a typographical error and should have read "The process" instead of "the container" since it is dependent on claim 15.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1764

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 8, 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Martindale (5,758,797) or Hunter (GB. 1428356).

It is noted that claims 1 and 8 recite a Markush group wherein one of the members is a particulate substance which does not have to be edible. Therefore Martindale and Hunter both anticipate the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 5, 7, 9, 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter as further evidenced by Martindale, further in view of Coleman (5,370,884) and Hoeting et al (5,993,870) or vice versa, i.e., Coleman and Hoeting et al in view of Hunter and Martindale.

In regard to claim 2, Hunter as further evidenced by Martindale teach containers with funnels for both powders and liquids; that is for flowable or fluent materials. Although claim 1 does not recite the function of the funnel, as disclosed, the funnel is to prevent spillage of fluent material. The use of funnels in containers to prevent spillage of fluent materials is notoriously old as evidenced by Hunter and Martindale. These references are seen to be general teachings that would fairly lead one to provide any container containing fluent material with a funnel. Claim 2 recites various edible

Art Unit: 1764

flowable solid materials of a candy composition. As evidenced by both Coleman and Hoeting et al, applicants are not the inventor of fluent candy products. Applicants are also not even the first to recognize the problem of spillage of fluent candy in a container as evidenced by Hoeting et al. To modify Hunter as further evidence by Martindale and substitute one conventional product for another if one wanted to reduce the risk of spillage as taught by the art taken as a whole would have been obvious. Similarly, employing Coleman as the primary reference, it would have been obvious to modify the container of Coleman and provide a funnel to reduce the risk of spillage in view of the teachings of funnels for that purpose by Hunter and Martindale and because of the problem of candy spillage as taught by Hoeting et al. In regard to claims 4 and 5, Coleman discloses a lollipop associated with a container of powdered candy wherein the holder can sealingly engaged the container. In regard to claim 7, to make any container transparent so that one might see the contents is, of course, notoriously old in the packaging art.

The remainder of the references cited on the USPTO 892 are cited as pertinent art. Note how the art is replete with examples of non-tilt containers with or without applicators (which can be associated with closures) which would also be the function of applicants lollipop.

To expedite prosecution, it is noted that, as disclosed, the invention is directed to preventing the spillage of powdered candy from a container by providing a funnel. However, isn't there some relationship between the dimensions of the funnel and the level of the contents to prevent spillage? Applicants are cautioned against the addition

Art Unit: 1764


of New Matter. Also, applicants are requested to furnish dates of introduction in the market (if known) for the products shown in the photographs filed with this application.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn
March 19, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
3/21/03